



Department of Corrections
ADMINISTRATIVE BULLETIN

**Subject: PREGNANCY POLICY
AND RELATED ISSUES**

Number:

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The purpose of this Administrative Bulletin is to announce the Department's policy and procedures regarding pregnancy and requests by pregnant staff for reasonable accommodation, temporary duty assignments, and related issues.

The Federal Pregnancy Discrimination Act of 1978 (an amendment to Title VII of the Civil Rights Act of 1964) and the California Fair Employment and Housing Act (FEHA) prohibit discrimination in employment on the basis of pregnancy, childbirth, or related medical conditions. Pregnant staff are to be treated on the basis of their ability to perform the "essential duties" of the job as any other employee in the same classification. It is unlawful to refuse to hire, refuse to select a person for a training program leading to employment or promotion, refuse to promote, terminate, or otherwise discriminate against the person on the basis of pregnancy. These laws also require that women unable to work because of pregnancy be provide with disability benefits, sick leave, and health insurance on the same basis as employees unable to work for other medical reasons.

In the recent Supreme Court case of International Union. United Automobile, Aerospace and Agricultural Implement Workers of America v. Johnson Controls, Inc., the court held that fetal protection policies are illegal. The court held that a company's concern for prenatal injury had no relation to whether its female employees were capable of performing their jobs. The court stated that "decisions about the welfare of future children must be left to the parents who conceive, bear, support, and raise them rather than to the employers who hire those parents."

The State Personnel Board (SPB) requires the Department to provide **reasonable accommodation** to a pregnant employee when needed, enabling her to continue to work as long as she is physically able to do so. The only legitimate basis for denial of the reasonable accommodation is when it presents **undue hardship** on the Department. Once reasonable accommodation is requested and supported by medical documentation, pregnancy is considered a temporary disability and benefits available to other temporarily disabled persons shall be provided.

DEFINITION OF REASONABLE ACCOMMODATION

Reasonable accommodation is defined as efforts made on the part of the employer to remove artificial or real barriers which prevent or limit employment of the disabled person. A woman is "disabled" by pregnancy, childbirth, or a related medical condition if in the opinion of her own doctor she is unable to perform the essential duties of the job or to perform these duties without undue risk to herself or to other persons.



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It should not be automatically assumed that a pregnant employee requires reasonable accommodation. Rather, reasonable accommodation should be **requested** by the pregnant employee and supported by medical documentation from the treating physician after reviewing a job description.

**PROCEDURES FOR EMPLOYEES REQUESTING REASONABLE
ACCOMMODATION**

An employee is not required to report a pregnancy until the treating physician imposes medical restrictions which affect the employee's ability to perform the essential duties of a job. Given these medical restrictions, the employee may request reasonable accommodation. If no medical limitations or restrictions are indicated, no grounds for reasonable accommodation exist and no further action should be taken.

A request for reasonable accommodation shall be initiated by the pregnant employee. It is recommended that the employee provide the treating physician with a copy of the duty statement, post order, or job analysis (available from the personnel office, supervisor, watch office, or the Return-to-Work [RTW] Coordinator) describing the specific job duties of the employee's position. These documents are to be used as a guideline in determining any medical limitations or work restrictions. Alternatively, a detailed verbal description of the job duties may be provided by the employee to the treating physician.

Before submitting a request for reasonable accommodation based on pregnancy, the employee shall do the following:

1. Obtain from the treating physician specific medical limitations or work restrictions in writing which shall be attached to the employee's request for reasonable accommodation.
 - a. For example, if a medical restriction is imposed on lifting, exactly how much weight can and c
 - b. In some cases, a treating physician may deem it appropriate to impose a restriction as to inmate contact. This restriction should be written in **very specific terms** to insure the intent of the physician is clear. For example, if the intent is that the employee have "limited inmate contact," it should be written as such, and not as "no inmate contact." Where a limited inmate contact restriction has been imposed, a pregnant employee could potentially be placed in a post assignment such as the gate control, or tower where appropriate.



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2. Having completed the above requirements, the employee shall submit a written request for reasonable accommodation utilizing CDC Form 855, Request for Reasonable Accommodation, to the direct supervisor with a copy to the RTW Coordinator. The request shall be accompanied by the supporting medical documentation from the treating physician reflecting the specific work limitations or restrictions.
3. All requests for reasonable accommodation shall be processed promptly and in n event longer than 20 working days from the date of the request. The employee shall not be forced to utilize accrued leave credits during this processing period. If necessary, the employee shall be placed in an appropriate alternate position pending approval of the reasonable accommodation request. If the request is denied or no response is received by the end of the 20 days, the employee has a right to appeal directly to the SPB, Appeals Division.

If the medical circumstances change and the employee requires a modification to a previously approved accommodation, the employee shall obtain from the treating physician medical verification describing the new work restriction and submit it to the supervisor and the RTW Coordinator.

**PROCEDURES FOR SUPERVISORS AND RTW COORDINATORS RECEIVING
REQUESTS FOR REASONABLE ACCOMMODATION**

The Federal Pregnancy Discrimination Act, FEHA and SPB policy mandate that a pregnant employee shall be allowed to work as long as she is physically able to do so without adversely affecting her health. **The Department shall not set fixed limits on the amount of time a pregnant employee can continue to work.** The point at which an employee decides to request pregnancy leave is a medical decision based on ability to perform the essential duties of a job as determined by the employee and her treating physician within the context of the Department's ability to provide her with reasonable accommodation.

A supervisor who is aware that a pregnant employee is having difficulty in performing a job assignment may discuss the Department's policy and procedures regarding pregnancy and reasonable accommodation with the employee. Ultimately, the decision ~o request reasonable accommodation rests with the employee.



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When reasonable accommodation is requested by an employee, the supervisor shall do the following:

1. Inform the employee of the departmental policy and procedures relating to pregnancy.
2. Advise the employee that a written request for reasonable accommodation is required utilizing CDC Form 855, accompanied by medical documentation from the treating physician indicating in very specific terms any work restrictions or limitations.
3. In some cases, the medical documentation from the treating physician may be vague or lack sufficient specificity to enable the supervisor to make an appropriate decision in terms of providing reasonable accommodation. In that case, the supervisor and/or RTW Coordinator shall consult with the employee first. With the employee's permission, the treating physician may be contacted to obtain further information and clarification.
4. Upon receipt of all necessary documentation, the supervisor shall work with the RTW Coordinator and make every effort to assist the employee with her request for reasonable accommodation and process the paperwork in a timely fashion.

When reasonable accommodation is requested by an employee, the RTW Coordinator shall do the following:

1. Assist the employee in obtaining the necessary duty statement, post order, job analysis, CDC Form 855, etc., if necessary.
2. Monitor compliance of procedures and timely processing of the request.

The facility, parole region, or headquarters' administration may review the terms of a reasonable accommodation at any time and make modifications where the need for the accommodation has either changed or no longer exists.



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**WORK OPTIONS AVAILABLE TO PREGNANT EMPLOYEES UNDER
REASONABLE ACCOMMODATION**

There are a variety of work options available when providing reasonable accommodation for pregnant employees. The following examples are intended to serve as guidelines and should not be construed as an exhaustive or restrictive list of options. Any combination of work options may be utilized to accommodate the employee throughout the term of the accommodation. These options include, but are not limited to, the following:

1. **Temporary Job Restructuring** involves restructuring or modifying the position to which the employee is currently assigned to accommodate medical restrictions without effecting the performance of the essential duties. **Supervisors are encouraged to fully explore this option before considering the other alternatives.**

For example, a Correctional Counselor I who is medically restricted to "limited inmate contact and no heavy lifting" could be allowed to remain in her current assignment if office space could be provided to allow her to see inmates by ducat only and assistance/carts were available to transport file materials. Another option may be to temporarily reassign her to the Inmate Appeals Office, the Classification and Parole representative Office, or to Business Services.

Another example is an Office Assistant position which includes filing could be temporarily restructured by eliminating the filing to accommodate the employee who is temporarily precluded from bending or stooping.

2. **Temporary Job Placement or Reassignment** to an alternate budgeted position in the same classification where medical restrictions can be accommodated. Although this does not mean creating a position, it may involve shifting other staff on a temporary basis.

For example, a file clerk who is temporarily precluded from bending, stooping, or reaching may be reassigned to a receptionist or typing position.

3. **Alternative Job Assignment or Temporary Assignment** (pursuant to SPB Rule 443) can be made to any other budgeted nonclass-related area deemed appropriate to accommodate medical restrictions. It shall not involve duties of a class that has a promotional relationship to the appointment class. A promotional relationship is



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considered to be where the maximum salary rate of one class is at least two steps higher than the maximum salary rate of another class (SPB Rule 431). The original rate of pay shall not be affected if the employee is temporarily assigned to a lower or higher classification as a reasonable accommodation.

For example, a Correctional Officer who is medically restricted to "limited inmate contact" may be assigned to an Office Assistant or Office Technician position or to an Associate Government Program Analyst position where it is deemed the individual has the ability to perform the essential duties of the job.

4. An employee may be placed on **Special Assignment** to a position at the discretion of the hiring authority
5. A pregnant employee may be placed on Temporary/Light Duty; however, this option has a limitation of 120 days. Temporary/Light Duty is not to be used in such a way that the employee is precluded from continuing to work if she is physically able to do so or forced to take maternity leave before she and the treating physician determine that it is appropriate. The hiring authority should make every effort to accommodate the employee and utilize a **combination of work options** throughout the duration of the request for reasonable accommodation.

For example, a Correctional Officer who is medically restricted from "responding to an alarm (generally means running) or from prolonged walking or standing" may be reassigned to posts such as the tower, gate, or control. This reassignment does not have to be classified as a Temporary Light Duty if the officer can perform all the duties of the post. At a later date, if the medical restrictions expand to include "limited contact with inmates and no climbing," she can be placed in a designated Temporary/Light Duty position. Following the 120-day time limit, she could be placed in an Office Assistant position on a special assignment to continue to accommodate her medical restrictions until she requests a pregnancy leave.

Salary and benefits of an employee placed on temporary reassignment or light duty as a means of providing reasonable accommodation shall remain unaffected, even if the employee is temporarily reassigned to a lower or higher classification.



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WAIVER OF WEAPONS/SELF DEFENSE REQUALIFICATION

A temporary waiver of weapons requalification requirements may be requested and requires approval by the work site Warden or Regional Parole Administrator, and concurrence by the appropriate Deputy Director and the Chief Deputy Director. (See Departmental Operations Manual (DOM) subsection 32010.19.5). A waiver for requalification for "Less than Lethal Weapons" (side-handle baton, gas, taser) as set forth in DOM subsection 32010.19.10 may also be requested by pregnant staff and is subject to the same approval process.

This waiver may be granted under special circumstances, including pregnancy and related medical conditions, and shall be reviewed at intervals of no more than one year. Upon expiration of the temporary waiver, the employee shall complete requalification requirements within 60 days as described in DOM subsection 32010.19.3. In a facility when a waiver is granted, the employee shall not be assigned to an armed post until she has requalified. In the Parole and Community Services Division when the waiver is granted, the weapon should be temporarily stored until the employee has requalified.

DENIAL OF A REQUEST FOR REASONABLE ACCOMMODATION

The only legitimate and legal basis for denying a request for reasonable accommodation based on pregnancy is "undue hardship." Undue hardship is defined as an action requiring significant difficulty or expense; for example, an action that is unduly costly, extensive, substantial, disruptive, or that shall fundamentally alter the nature of the program. The factors that shall be considered in determining undue hardship are set forth in the American With Disabilities Act of 1990 and the SPB booklet Guide for Implementing Reasonable Accommodation. The criteria include the following considerations:

1. The overall size of the department with respect to the number of the employees, number and types of facilities, and the size of the budget.
2. The type of operation including the composition and structure of the work force.
3. The nature and cost of the accommodation.

If the administration of a particular work site believes that an employee's request for reasonable accommodation would impose "undue hardship" on the **Department**, the request may be denied.



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The Assistant Director of Affirmative Action (AA) shall be contacted **before** a request for reasonable accommodation is denied.

A copy of all reasonable accommodation requests from pregnant employees, whether approved or denied, shall be forwarded to the Assistant Director of AA within 20 days of the decision.

APPEAL PROCEDURES

All requests for reasonable accommodation are expected to be processed promptly and in no event longer than 20 working days from the receipt of the request. An employee shall receive a response in writing whether the request has been approved or denied. An employee who receives a denial has the right to appeal the decision to the SPB, Appeals Division, within 30 days of the receipt of the decision. If no response has been received within 20 working days, the request shall be deemed denied and the employee has an immediate right to appeal to the SPB. Such filing shall be done within 30 days of the exhaustion of the 20-day period.

PREGNANCY DISABILITY LEAVE PROCEDURE

A Pregnancy Disability Leave is any leave, whether paid or unpaid, taken by an employee for any period of disability caused by the employee's pregnancy, childbirth, or a related medical condition. (Government Code [GC] Section 12945)

If a Pregnancy Disability Leave is requested, the employee shall submit a written request to the supervisor providing reasonable notice of the date the leave is to begin and the estimated duration. The employee shall provide medical documentation from the treating physician to support the request for Pregnancy Disability Leave. An employee disabled by pregnancy shall be entitled to receive Non-Industrial Disability Leave benefits (GC Section 19878[c]). An employee may elect to utilize sick leave, vacation, or other accrued leave credits during the period of medically documented disability.

If the employee returns to work upon the approval of the treating physician, the employee retains the absolute right to return to the **original or exact same job** held prior to the reasonable accommodation provided such release and immediate return to work occur within four months of the beginning of the pregnancy disability (California Code of Regulations Title Division 4, Section 7291[c][1])



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An employee whose pregnancy disability extends beyond four months or who is authorized to use accrued paid leave, such as vacation or Compensatory Time Off following the pregnancy disability, has a mandatory right of return to a "former position."

OTHER PARENTAL LEAVE PROCEDURES

The "appointing power" in the following sections is defined as the Warden, the Regional Parole Administrator, the appropriate Deputy Director, or the Chief Deputy Director.

The law states that a state employer **shall** grant a permanent employee a Leave of Absence without pay for the purpose of pregnancy, childbirth, or recovery therefrom for a period not exceeding one year. (GC Section 19991.6)

The law states that state employers **shall** also grant a male spouse or parent who is a permanent employee a leave of absence without pay for a period not to exceed **one year** to care for a newborn child. Further, various collective bargaining agreement articulate certain rights in this area. The employee shall submit a request to the direct supervisor providing reasonable notice of the date the leave is to commence and the estimated duration. Any change to the length of the leave is not permitted without the prior approval of the direct supervisor. (GC Section 19991.6[2])

State employers may grant a permanent employee's request for a leave of absence for the adoption of a child not to exceed one year. The employee shall provide written substantiation to support their request for adoption leave giving reasonable notice of the date leave is to commence and the estimated duration. Any change to the length of the leave shall not be effective unless approved by the appointing power. (GC Section 19991.6[3]).

FAMILY CARE LEAVE

GC Section 12945.2, which became effective January 1, 1992 provides that permanent state employees have a mandatory right to a total of four months in any 24-month period for unpaid family care leave. Family care leave means a leave to care for a newborn or newly adopted child or to care for a spouse, parent, or child who is seriously ill. The only legitimate basis for denial is if granting the leave would create an undue hardship on the Department. Leave for family care may exceed the four-month limit but the additional leave period would be subject to the appointing power's approval.



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Employees are required to provide reasonable notice to the appointing power (where possible) and schedule the leave in a manner that causes the least disruption to the Department's operations.

Employees may elect to use any accrued vacation leave or other accrued time. Sick Leave may be used if mutually agreed to by the employee and the appointing power.

Employers are required to guarantee the employee a position with the same or similar duties and pay upon return from a family care leave.

RETURN RIGHTS

The law provides that the Department shall return an employee to the **original or exact same job** after returning from a **Pregnancy Disability Leave** provided the employee returns to work upon release by the treating physician and the leave does not exceed four months from the beginning of the pregnancy disability. The exception to this policy is where the job ceased to exist for reasons unrelated to the employee's leave. In that case, or where the employee has taken a Pregnancy Disability Leave or a Leave of Absence for **longer than four months**, the employee has a mandatory right to return to their **former** position. CG Section 18522 defines "former position" as follows: (a) the last position which an employee held as probationer, permanent employee or career executive, or (b) a position to which the same appointing power could have assigned an employee within a designated geographical area.

Please inform all persons concerned of the contents of this bulletin which shall remain in effect until incorporated into DOM Sections 31010, 31020, and 31130. Please note that CDC Form 855 is under revision. If you have any questions, please contact Nora Brusuelas, Assistant Director, Affirmative Action, at (916) 322-9520 or ATSS 492-9520.

JAMES H. GOMEZ
Director of Corrections